

## REMARKS

Upon entry of the present amendment, claims 1 – 4, 6, 7, 11, 14 – 19, 21 – 26, and 29 – 31 are pending. Claims 5, 8 - 10, 12, 13, 20, 27, 28 and 32 – 37 have been cancelled. The present amendment adds no new matter.

### THE 35 U.S.C. §103(A) REJECTION

The Examiner has rejected claims 1-4, 6-7, 10-19, 21-26 and 29-31 under 35 U.S.C. 103(a) as being unpatentable over The Medicine Catalogue (“**The Medicine Catalogue**”) in view of Pingel *et al.* (US Patent No. 6,903,069; “**Pingel**”) and Johannessen *et al.* (WO 01/82943; “**Johannessen**”).

Applicants traverse. Applicants note that the publication date of **Pingel** is September 26, 2002; as such the earliest effective date of **Pingel** under 35 USC §102(a) or (b) (*if applicable*) is September 26, 2002. Applicants further note that the present Application has a priority date of December 21, 2001. Since the present Application was filed before the publication of **Pingel**, it is not available as prior art under 35 USC §102(a) or (b), but instead is only available under 35 USC §102(e). *See e.g.* M.P.E.P. §2132. Thus, as set forth in M.P.E.P. §706.02(l)(2)(II), Applicants assert that the present Application and **Pingel** were, at the time the invention of the present Application was made, owned by Novo Nordisk. In light of this, Applicants assert that **Pingel** is disqualified as prior art and can not be used to support the present rejection. Accordingly, Applicants request reconsideration and withdrawal of the present rejection.

### THE NON-STATUTORY DOUBLE PATENTING REJECTION

The Examiner has rejected claims 1 – 4, 6, 7, 11, 14 – 19, 21 – 26 and 29 – 31 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1 – 10 of U.S. Patent No. 6,833,352.

Upon notification of allowable subject matter, Applicants will file all necessary Terminal Disclaimers.

### **Conclusion**

In view of the above, Applicant(s) submit(s) that the application is now in condition for allowance and issue and respectfully request(s) early action to that end. Applicant(s) believe(s) that no additional fees are due. However, should any fees be due, the Commissioner is hereby authorized to charge any fees in connection with this application and to credit any overpayments to Deposit Account No. 14-1447. The undersigned invites the Examiner to contact her by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

Date: October 23, 2009

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